A

Public Prosecutor v Mohamed Danny bin Mohamed Jedi

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-05(H)-390–10 OF 2016

B

ZAWAWI SALLEH, AHMADI ASNAWI AND KAMARDIN HASHIM JJCA

22 JANUARY 2018

C

Criminal Procedure — Appeal — Appeal by prosecution — Appeal against sentence imposed by trial judge — Accused person pleaded guilty to offence of dealing with terrorist property — Accused person sentenced to four years imprisonment — Whether sentence appropriate — Whether ought to be enhanced — Penal Code s 130Q

D

The respondent was charged for dealing with terrorist property, an offence under s 130Q(1) of the Penal Code. The narration of the prosecution showed that the respondent was the elder brother of Muhammad Wanndy Mohammed Jedi, the Malaysian Islamic State ('IS') militant leader based in Syria. The

E

respondent received instruction from Muhammad Wanndy through 'WhatsApp' application to accept cash deposit into his Maybank account and to withdraw the money and distribute it to several individuals in Iraq via the Western Union service. The respondent pleaded guilty to the charge and was sentenced to four years imprisonment. Hence, the present appeal by the

F

prosecution against the sentence imposed by the learned judicial commissioner ('the JC'). The prosecution argued that the severity of the offence and the aggravating factors warranted a lengthy custodial sentence. By sentencing the respondent to four years imprisonment for a terrorist related offence, which the JC himself considered as serious, the prosecution contended that His Lordship

G

was merely paying lip service to the principle of public interest.

Held, allowing the appeal:

(1) The sentence of four years imprisonment imposed by the JC was

H

manifestly inadequate taking into account the nature of the offence, the manner in which it was planned and committed and the motive for the commission of the offence. While an accused person should be given credit for pleading guilty, there could be no automatic rule that a guilty plea on its own entitled an accused to a lesser punishment. The severity of

I

the offence outweighed the respondent's plea of guilty (see paras 24 & 26).

(2) The spate of terrorist attacks had continued to rise, and the correlation between such attacks and terrorism financing was significant. While the respondent had no direct involvement with the terrorist group, his action

carried risk of indirectly enhancing the abilities of the group. The respondent had followed a systematic plan and executed it meticulously. He collected the money over a period of time and wired small amounts to different individuals in several transactions (see paras 18 & 22).

[Bahasa Malaysia summary

Responden dituduh berurusan dengan harta pengganas, satu kesalahan di bawah s 130Q(1) Kanun Keseksaan. Naratif pihak pendakwaan menunjukkan bahawa responden adalah saudara lelaki Muhammad Wanndy Mohammed Jedi, pemimpin militan Negara Islam Malaysia ('IS') di Syria. Responden menerima arahan daripada Muhammad Wanndy menerusi aplikasi 'WhatsApp' untuk memasukkan deposit tunai ke dalam akaun Maybanknya dan mengeluarkan duit tersebut seterusnya mengedarkannya kepada beberapa individu di Iraq menerusi perkhidmatan Western Union. Responden mengaku bersalah terhadap pertuduhan tersebut dan dijatuhkan hukuman empat tahun penjara. Oleh itu, rayuan ini oleh pihak pendakwaan terhadap hukuman yang dijatuhkan oleh pesuruhjaya kehakiman ('PK'). Pihak pendakwaan menghujahkan bahawa keseriusan kesalahan dan faktor pemberatannya mewajarkan hukuman penjara yang panjang. Dengan menjatuh hukuman terhadap responden selama empat tahun penjara atas kesalahan berkaitan dengan pengganas, yang PK sendiri anggap serius, pihak pendakwaan menegaskan bahawa beliau hanya mempertimbangkan prinsip kepentingan awam sekadar di mulut.

Diputuskan, membenarkan rayuan:

(1) Hukuman penjara empat tahun yang dikenakan oleh PK adalah nyata tidak cukup dengan mengambil kira jenis kesalahan tersebut, cara bagaimana ia dirancang dan dilakukan dan motif melakukan kesalahan tersebut. Walaupun seseorang tertuduh patut diberi kredit kerana mengaku bersalah, tidak ada peraturan automatik bahawa pengakuan bersalah dengan sendirinya melayakkan tertuduh mendapat hukuman yang lebih ringan. Keseriusan kesalahan lebih berat dari pengakuan bersalah responden (lihat perenggan 24 & 26).

(2) Serangan keganasan pengganas terus meningkat, dan hubungan antara serangan dan pembiayaan keganasan adalah penting. Walaupun responden tidak mempunyai penglibatan langsung dengan kumpulan pengganas, tindakannya membawa risiko, secara tidak langsung, meningkatkan keupayaan kumpulan ini. Responden telah mengikuti perancangan yang sistematik dan melaksanakannya secara teliti. Dia telah mengumpul wang tersebut dalam satu tempoh masa dan memindahkan sejumlah kecil kepada individu yang berlainan dalam beberapa transaksi (lihat perenggan 18 & 22).]

Notes

For cases on appeal by prosecution, see 5(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 579–586.

Cases referred to

Bachik bin Abdul Rahman v PP [2004] 2 MLJ 534; [2004] 2 CLJ 572, CA (refd)

Bhandulananda Jayatilake v PP [1982] 1 MLJ 83; [1981] 1 LNS 139, FC (refd)

Channon v The Queen [1978] 20 ALR 1, FC (refd)

Dhananjay Chatterjee @ Dhana v State of West Bengal (1994) 2 SCC 220, SC (refd)

Mohamed Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167; [1987] CLJ Rep 209, SC (refd)

Mukesh & Another v State (NCT of Delhi) And Others (2017) 3 SCC 719, SC (refd)

Pendakwa Raya lwn Muamar Gadaffi bin Mohamad Shafawi [2017] MLJU 483, CA (refd)

Pendakwa Raya lwn Ummi Kalsom bt Bahak [2016] 6 MLJ 407; [2015] 7 CLJ 503, MT (distd)

PP v Ling Leh Hoe [2015] MLJU 1006; [2015] 4 CLJ 859, CA (refd)

PP v Loo Choon Fat [1976] 2 MLJ 256 (refd)

PP v Mohd Nooh bin Yusof & Ors [1993] MLJU 271; [1993] 4 CLJ 275, HC (refd)

PP v Mohd Rosmadi Che Daud [2015] MLRHU 1 (refd)

PP v Muhammad Kasyfullah bin Kassim [2016] MLJU 723; [2017] 1 CLJ 79, CA (refd)

PP v Rohaimi bin Abd Rahim & 1 lagi (Criminal Appeal No W-05(H)-83–02 of 2016) (unreported), CA (refd)

PP v Yazid bin Sufaat & Ors [2015] 1 MLJ 571; [2014] 2 CLJ 670, CA (refd)

R v Ipeelee [2012] SCC 13; [2012] 1 SCR 433, SC (refd)

Sumer Singh v Surajbhan Singh v Ors (2014) 7 SCC 323, SC (refd)

Wong Kai Chuen Philip v PP [1991] 1 MLJ 321, HC (refd)

Legislation referred to

Penal Code ss 130J(1)(a), 130Q(1), 511, Chapter VIA

Appeal No: Criminal Trial No 45SO-13–7 of 2016 (High Court, Kuala Lumpur)

Dhiya Syazwani Izyan bt Mohd Akhir (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.

Arik Zakri bin Abdul Kadir (The Chambers of Arik & Kamal) for the respondent.

Zawawi Salleh JCA (delivering judgment of the court):

INTRODUCTION

[1] This appeal is set in the context of the sentencing of an offender who engages in a terrorist financing offence.

[2] The charge against the respondent read as follows:

> Bahawa kamu di antara 28 Januari 2016 hingga 5 Mac 2016 di akaun Maybank nombor 154110259028 yang beralamat di Maybank Cawangan Ayer Keroh, G-6, Lebuh Ayer Keroh, Hotel King, dalam daerah Melaka Tengah, dalam Negeri Melaka, telah dengan pengetahuan mengendalikan secara tidak langsung harta pengganas yang bernama Muhammad Wanndy bin Mohamed Jedi (No KP: 901116-04-5293), dengan cara membenarkan kemasukan wang sebanyak RM12,130 dan pengeluaran wang sebanyak RM10,000 dari akaun Maybank berkenaan bagi manfaat pengganas tersebut yang merupakan satu kesalahan di bawah seksyen 130Q(1) Kanun Keseksaan dan boleh dihukum di bawah peruntukan yang sama.

[3] The respondent pleaded guilty and was duly convicted under s 130Q(1) of the Penal Code. After having considered the written and oral submissions by the parties, the learned judicial commissioner ('JC') sentenced the respondent to four years imprisonment from the date of arrest (18 May 2016).

[4] Disenchanted with the said sentence, the public prosecutor ('PP') has now appealed to this court urging for enhancement of the sentence.

[5] For the reasons that follow, we found there was merit in this appeal and accordingly we allowed the appeal by the PP. The sentence of four years imprisonment imposed by the High Court was set aside and substituted it with an imprisonment term of eight years with effect from the date of arrest (18 May 2016).

THE FACTUAL BACKGROUND

[6] Shorn of unnecessary details, the relevant facts giving rise to this appeal may be shortly stated as follows:

(a) the respondent is the elder brother of Muhammad Wanndy Mohammed Jedi, the Malaysian Islamic State ('IS') militant leader based in Syria;

(b) the respondent received instruction from Muhammad Wanndy through 'Whatsapp' application to accept cash deposit into his Maybank account at the Ayer Keroh branch in Malacca;

(c) the respondent was also told to withdraw the money and distribute it to several individuals in Iraq via the Western Union service and he would be given between RM100 and RM300 for each transaction he made;

(d) on 28 January 2016 and 29 January 2016, one Azuddin bin Mahmud had deposited RM1,000 and RM2,500 respectively into the respondent's Maybank account. On 29 January 2016, the respondent withdrew a sum of RM3,300 from an automated teller machines ('ATM') located at Port Klang, Selangor. On the same day, the respondent made a transfer of RM3,200 (inclusive of GST and processing fee) to one Hazim Sabri Ahmad in Iraq via Wester Union service;

(e) on 18 February 2016, one Bukhori bin Che Noor deposited RM4,300 into the respondent's bank account. On the same day, he withdrew a sum of RM4,300 from an ATM located at Kapar, Selangor. The respondent then made a transfer of RM4,100 (inclusive of GST and processing fee) to one Abdul Salam Yusof in Iraq via Western Union service;

(f) on 3 March 2016, one Mohd Haniffa bin Syedul Akhar deposited RM2,400 into the respondent's bank account. On the same day, he withdrew a sum of RM2,400 from an ATM located at Sungai Buloh, Selangor. The respondent then made a transfer of RM2,300 (inclusive of GST and processing fee) to one Suaad Abbid El Ghani Ahmad in Iraq via Wester Union service. On 5 March 2016, one Mohd Haniffa deposited RM1,930 into the respondent's bank account;

(g) a total of RM12,130 was deposited into the respondent's Maybank account between January 28 and March 5, 2016. The respondent had withdrawn RM10,000 and distributed RM9,900 to those three individuals for the benefit of the terrorist concerned; and

(h) police investigation showed that one Mohd Haniffa bin Syedul Akhbar, acting on the instruction from Muhammad Wanndy, had deposited RM2,400 and RM1,930 into the respondent's Maybank account on 3 March 2016 and 5 March 2016.

FINDINGS OF THE HIGH COURT

[7] The learned JC had addressed himself correctly on the general principles of sentence namely: (a) the question of public interest; (b) the seriousness of the offence; (c) the rampancy of the offence; (d) the question of deterrence to the offender, and to would be offenders; (e) the background of the offender; and (f) the plea of guilty. Several case laws were cited and referred to namely: *Public Prosecutor v Mohd Nooh bin Yusof & Ors* [1993] MLJU 271; [1993] 4 CLJ 275, *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167; [1987] CLJ Rep 209, *Wong Kai Chuen Philip v Public Prosecutor* [1991] 1 MLJ 321. In imposing the sentence that he did, the learned JC reasoned as

follows:

> [15] Mahkamah ini sering memandang berat dengan kesalahan-kesalahan yang melibatkan keganasan. Ia harus dan wajar dikenakan hukuman yang berat dan berbentuk deteren seperti hukuman penjara. Walau bagaimanapun dalam menimbangkan hukuman terhadap tertuduh, *mahkamah mempertimbangkan rayuan tertuduh tentang pengakuan bersalah yang dibuat di kesempatan yang awal sebaik sahaja kes ini ditetapkan untuk sebutandi mahkamah Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167; [1987] CLJ Rep 209). Walaupun keseriusan dan kepentingan awam mengatasi faktor mitigasi tertuduh, namun begitu hal kadar kes itu sudah harus diambil kira (*Wong Kai Chuen Philip v Public Prosecutor* [1991] 1 MLJ 321).
>
> [16] ... Dari fakta kes sememangnya *tertuduh telah melakukan kesalahan itu dengan cara yang tidak langsung* telah membenarkan akaunnya digunakan oleh Muhammad Wanndy yang merupakan adik tertuduh yang berada di Syria. Tertuduh tanpa mengenali latar belakang individu yang memasukkan wang ke dalam akaunnya, tertuduh kemudian menghantar wang ke individu yang tidak dikenali yang berada di Iraq dengan harapan mendapat sedikit ganjaran sebanyak RM100 hingga RM300 daripada transaksi yang dibuatnya. *Perbuatan secara tidak langsung ini kemudiannya didapati untuk kegunaan pengganas tidak sewajarnya dikenakan dengan hukuman penjara yang begitu lama*, malah dalam mitigasi Tertuduh beliau menyatakan wang yang disalurkan kepada adik beliau Muhammad Wanndy bin Muhamed Jedi adalah untuk kegunaan isteri beliau yang sarat mengandung. Dari fakta kes hanya dua transaksi wang yang dimasukkan oleh penama Mohd Haniffa bin Syedul Akhbar ke dalam akaun tertuduh pada 3 Mac 2016 dan 5 Mac 2016 adalah atas arahan Muhammad Wanndy. Mahkamah ini mempercayai inilah wang yang diarahkan oleh adik tertuduh untuk disalurkan bagi kegunaan Muhammad Wanndy. Dari hal keadaan secara tidak langsung terlibat dalam perlakuan mengendalikan harta pengganas dan memberi manfaat kepada pengganas ini, mahkamah ini seharusnya berhati-hati dalam mempertimbangkan tempoh hukuman penjara diimbangi dengan faktor kepenting awam dan seriusnya kesalahan itu.
>
> [17] Dalam kes *Pendakwa Raya lwn Ummi Kalsom bt Bahak* [2016] 6 MLJ 407; [2015] 7 CLJ 503 yang mana responden telah disabitkan kerana cuba memberi sokongan kepada kumpulan pengganas ISIS di Syria, kesalahan di bawah s 130J(1)(a), dibaca bersama s 511 Kanun Keseksaan dimana hukuman maksimum yang diperuntukkan adalah 30 tahun penjara, responden telah dikenakan hukuman dua tahun penjara. (Emphasis added.)

[8] It would appear that the decision of the learned JC was influenced by the following considerations:

(a) the respondent pleaded guilty upon the first available opportunity;

(b) the respondent's participation was indirect; and

(c) the decision in the *Pendakwa Raya lwn Ummi Kalsom bt Bahak* [2016] 6 MLJ 407; [2015] 7 CLJ 503.

A THE APPEAL

[9] In reviewing the sentence, we reminded ourselves of trite law that punishment of offender falls within the discretion of the trial court. A court of appeal should be careful not to erode such discretion and can only interfere with the sentence and the discretion exercised by the trial court in certain limited instances.

[10] Generally it must be shown that the sentence is demonstrably unfit — either manifestly inadequate or grossly excessive or illegal or not a proper sentence having regard to all the facts disclosed on the record or which the court ought to take judicial notice (see *Bhandulananda Jayatilake v Public Prosecutor* [1982] 1 MLJ 83; [1981] 1 LNS 139 *Public Prosecutor v Loo Choon Fat* [1976] 2 MLJ 256).

[11] In *Public Prosecutor v Ling Leh Hoe* [2015] MLJU 1006; [2015] 4 CLJ 859, this court had this to say:

> [13] At the outset, we must say that the contention of the learned counsel for the respondent that the prosecution should not have appealed against the sentence is misconceived. The prosecution is entitled to file an appeal against sentence:
>
> (a) where the sentence reveals manifest inadequacy or inconsistency in sentencing as to constitute an error in principle;
>
> (b) where it is necessary for the Court of Appeal to lay down principles for the governance and guidance of the lower courts;
>
> (c) to enable the courts to establish and maintain adequate standards of punishment for crime;
>
> (d) to enable idiosyncratic views of the individual judge as to particular crimes or types of crimes to be corrected;
>
> (e) to correct a sentence which is so disproportionate to the seriousness of the crime as to shock the public conscience; and
>
> (f) to ensure, as far as the subject matter permits, that there will be uniformity in sentencing.
>
> [14] The appellate court can and will interfere in the sentence imposed by the lower court if it is satisfied that any of the following four grounds are made out:
>
> (a) the sentencing judge had made a wrong decision as to the proper factual basis for the sentence;
>
> (b) there had been an error on the part of the trial judge in appreciating the material facts placed before him;
>
> (c) the sentence was wrong in principle; or
>
> (d) the sentence imposed was manifestly excessive or inadequate.

(See *R v Ball* [1951] 35 Cr App R 164; *Loo Weng Fatt v Public Prosecutor* [2001] 3 SLR 313 at para 65; *Public Prosecutor v UI* [2008] 4 SLR 500.)

[12] Before us, learned deputy public prosecutor ('DPP') mounted a spirited attack on the sentence imposed by the learned JC. She vehemently argued that the severity of the offence and the aggravating factors warrants a lengthy custodial sentence. By sentencing the respondent to four years imprisonment for a terrorist related offence which the learned JC himself considered as serious, the learned DPP contended that His Lordship was merely paying lip service to the principle of public interest. It was contended that the learned JC had failed to observe the trend of sentencing in relation to terrorist related offences under Chapter VIA of the Penal Code. She cited the Court of Appeal judgments in *Public Prosecutor v Muhammad Kasyfullah bin Kassim* [2016] MLJU 723; [2017] 1 CLJ 79, *Pendakwa Raya lwn Muamar Gadaffi bin Mohamad Shafawi* [2017] MLJU 483, *Public Prosecutor v Rohaimi bin Abd Rahim & 1 lagi* (Criminal Appeal No W-05(H)-83–02 of 2016) (unreported) for our consideration and comparison.

[13] In reply, learned counsel for the respondent submitted that this is not a case that warrants appellate intervention by this court. It was submitted that the learned JC in imposing the sentence which he did, had correctly applied the principles of law and took into consideration the totality of the facts and circumstances of this case. Learned counsel for the respondent cited the High Court judgments in *Pendakwa Raya lwn Ummi Kalsom bt Bahak* [2016] 6 MLJ 407; [2015] 7 CLJ 503 and *Public Prosecutor v Mohd Rosmadi Che Daud* [2015] MLRHU 1 in support of the proposition that the appellate court should refrain from interfering with sentences imposed by the trial judge. Further, the respondent had pleaded guilty at the first available opportunity.

OUR FINDINGS

[14] It is trite law that the sentence must be proportionate to both the seriousness of the offence and the degree of responsibility of the offender. The concept of proportionality was explained in the Canadian Supreme Court case of *R v Ipeelee* [2012] SCC 13; [2012] 1 SCR 433 in para 37 as follows:

> Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. ... Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principles serves a limiting or restraining function and ensures justice for the offender.

[15] The protection of society is one of the important purposes of

punishment under the principle of proportionality. In *Channon v The Queen* [1978] 20 ALR 1 at p 5 the court stated:

> The necessary and ultimate justification for criminal sanctions is the protection of society from conduct which the law proscribes. Punishment is the means by which society marks its disapproval of criminal conduct, by which warning is given of the consequences of crime and by which reform of an offender can sometimes be assisted. Criminal sanctions are purposive, and they are not inflicted judicially except for the purpose of protecting society; nor to an extent beyond what is necessary to achieve that purpose.

[16] In the same vein, in *Sumer Singh v Surajbhan Singh v Ors* (2014) 7 SCC 323, the Supreme Court of India, while elaborating on the duty of the court in imposing sentence for an offence, ruled that it is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of society and legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to social conscience. In a way, it is an obligation to the society which has reposed faith on the court of law to curtail the evil.

[17] In this instant appeal, the learned JC found that the respondent's indirect involvement did not justify the imposition of a lengthy sentence. The learned JC also found, in agreeing with learned counsel that the respondent was merely helping out his brother on humanitarian grounds and the money was meant to pay for the medical bills of Wanndy's pregnant wife.

[18] We found it difficult to appreciate this argument. With due respect, the learned JC had improperly minimises the seriousness of the offence. His Lordship had failed to take judicial notice that IS has been designated a terrorist organisation by the United Nations Security Council and many individual countries. While those who assist in financing terrorism may not be directly involved in the violence and mayhem that characterise terrorist activities, their culpability remains high. The spate of terrorist attacks has continue to rise, and the correlation between such attacks and terrorism financing is quite significant. They require such resources to operate their training facilities, acquire weapons and new adherents; and otherwise to perpetuate their nefarious activities. While the respondent had no direct involvement with the terrorist group, his action carries some risk of indirectly enhancing the abilities of the group.

[19] The impact of terrorist activities is explained in the Court of Appeal case of *Public Prosecutor v Yazid bin Sufaat & Ors* [2015] 1 MLJ 571; [2014] 2 CLJ 670 as follows:

[23] An act of terrorism is a transnational phenomenon. It has no territorial limits. It transcends national borders. For instance, an act of terrorism may be planned or hatched within Malaysia with an intention to execute it outside Malaysia. The intention of SOSMA is, among others, to prevent Malaysia from being used as a terrorist haven. S Rajendra Babu and GP Marthur JJ in *People's Union For Civil Libertties & Anor v Union of India* AIR [2004] SC 456 aptly describe acts of terrorism as follows:

> The terrorist threat that we are facing is now on an unprecedented global scale. Terrorism has become a global threat with global effects. It has become a challenge to the whole community of civilized nations. Terrorist activities in one country take on a transnational character, carrying out attacks across one border, receiving funding from private parties or a government across another, and procuring arms from multiple sources. Terrorism in a single country can readily become a threat to regional peace and security owing to its spill over effects. It is therefore difficult in the present context to draw a sharp distinction between domestic and international terrorism. Many happenings in the recent past caused the international community to focus on the issue of terrorism with renewed intensity.

[20] We associate ourselves with the above sentiments. Indeed, in the recent years, the IS has garnered international attention for its particularly ruthless attacks. It has been operating in Syria and Iraq and it now stands as one of the most dangerous terrorist group. The United Nation's Al-Qaida Sanctions Committee first listed IS in its sanctions list under the name 'al-Qaeda in Iraq' on 18 October 2004, as an entity or group associated with al-Qaeda. On 2 June 2014, the group was added to its listing under the name 'Islamic State in Iraq and the Levant'. Since declaring its caliphate in June 2014, the IS has gone global and conducted hundreds of attacks in various countries other than Iraq and Syria, where its carnage has taken a much deadlier toll. Malaysia is not spared by the menace of IS. Over the past few years, hundreds were arrested by the Malaysian police suspected of having ties to the IS. Intelligence reports indicate that about 200–250 Malaysians have arrived in the Middle-East to fight alongside with the IS militants. The growing number of Malaysian IS supporters has led to the first terrorist attack against the country. On the wee hours on 28 June 2016, two attackers had launched a grenade attack at the Movida Bar in Puchong, Selangor and injured several members of the public. The police had confirmed that the attack was orchestrated by Muhammad Wanndy, the respondent's younger brother who was also responsible for recruiting Malaysians in becoming IS fighters since 2015.

[21] The learned JC relied heavily on the case of *Ummi Kalsom Bahak* where the accused in that case was sentenced to two years imprisonment for attempting to support the commission of a terrorist act, an offence under s 130J(1)(a) of the Penal Code, read together with s 511 of the same Code.

[22] With respect, we found that the reliance on the case of *Ummi Kalsom Bahak* was misplaced as the case at hand was clearly distinguishable from the former. In *Ummi Kalsom Bahak*, the accused had planned to travel to Syria and marry one Muhammad Aqif, an IS militant. However, she was arrested at KLIA2 en route to Brunei, Istanbul and Syria. It was an inchoate offence as the offence of giving support to the commission of a terrorist act has yet to be completed, in which case the maximum jail term would be fifteen years; whilst the maximum term applicable to the respondent's case is twenty years. In our present case, the respondent had followed a systematic plan and executed it meticulously. He collected the money over a period of time and wired small amounts to different individuals in several transactions. He made withdrawals from ATMs at various locations. The respondent had used generic terms such as 'pembelian barang' or 'goods payment' to ultimately disguise the funds. All these were done discreetly to avoid scrutiny and to prevent potential detection.

[23] The amounts involved are not large, but every penny is a contribution to serious harm. Much havoc can be wreaked with inexpensive items. The cost of a terrorist attack can be modest, but the cost to society is far greater. The fundraising depends on people like the respondent who are prepared to facilitate the transactions to and from his bank account which benefited the Syria-based militant Muhammad Wanndy. The respondent's motives may have had a humanitarian aspect, but it is clear that he was aware that the money that he collected and wired would go to the terrorist group. This was not a case of a vulnerable young person being lured or beguiled into criminal misconduct in which he was not inclined to participate. The respondent was a willing participant and took steps to provide support to the group.

[24] The learned High Court judge appears to have attached considerable weight to the fact that respondent had pleaded guilty. While it is generally accepted that an accused person should be given credit for pleading guilty, there can be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment. In the case of *Bachik bin Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534; [2004] 2 CLJ 572, Augustine Paul JCA (as he then was) stated at pp 583–584 as follows:

> The circumstances in which a guilty plea will not have any weight are varied. The severity of the offence committed may outweigh the mitigating effect of a guilty plea (see *Loh Hock Seng & Anor v Public Prosecutor* [1980] 2 MLJ 13; *Public Prosecutor v Oo Leng Swee & Ors* [1981] 1 MLJ 247). Where public interest demands effect of a guilty plea must also give way (see *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR 537; *Public Prosecutor v Govindnan a/l Chinden Nair* [1998] 2 MLJ 181; [1998] 2 CLJ 370). A guilty plea cannot also be a powerful mitigating factor when effectively no defence to the charge is available to the accused (see *Public Prosecutor v Low Kok Wai* [1988] 3 MLJ 123; [1988] 2 CLJ 105; [1988] 2 CLJ Rep 268). If a plea of guilty is made too late in the trial it may also cease to have mitigating effect (see *Pegawai Pendakwaraya v Dato' Nallakaruppan a/l Solaimalai* [1999] MLJU 74;

[1999] 2 CLJ 596). The absence of mitigating factors in favour of the accused like, for instance, the existence of previous convictions may also deprive the guilty plea of its effect. There can therefore be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment (see *Public Prosecutor v Tia Ah Leng* [2000] 5 MLJ 401; [2000] 5 CLJ 614). Be that as it may, where there is a departure from the general rule the reason for not treating the guilty plea as a mitigating factor must be reflected in the grounds of judgment (see *Tan Lay Chen v Public Prosecutor* [2001] 1 MLJ 135; [2000] 4 CLJ 492).

[25] We must emphasis that terrorism is a distinct category of criminal activity. It has no equal because it is motivated by rigid and intolerant ideologies, rather than financial gain, anger, or revenge. It is far more insidious in that it attacks our very way of life and seeks to destroy the fundamental values to which we ascribe-values that form the essence of our constitutional democracy. Malaysia has an international obligation to deter terrorism on the world front, and Malaysian courts must assist in fulfilling that obligation by ensuring severe punishment for terrorist offences to reflect the abhorrence and condemnation of the Malaysian community against such crime.

[26] We, therefore, are firmly of the view that the severity of the offence herein outweighs the respondent's plea of guilty. The sentence of four years imprisonment imposed by the learned JC was manifestly inadequate. In this regard, we take note of the observations made by the Indian Supreme Court in the case of *Dhananjay Chatterjee @ Dhana v State of West Bengal* (1994) 2 SCC 220 at para 15:

> ... Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

[27] Since the hearing of this appeal, this court has pronounced several judgments arising from appeals against convictions and sentences in relation to terrorist related offences. In *Public Prosecutor v Muhammad Kasyfullah bin Kassim* [2016] MLJU 723; [2017] 1 CLJ 79, the accused was convicted for his involvement in the militant movement of the IS. He had undergone militant training, participated in series of battle using firearms against President Bashar Al-Assad's regime. This court had increased his term of imprisonment from five years to twelve years. In the case of *Pendakwa Raya lwn Muamar Gadaffi bin Mohamad Shafawi* [2017] MLJU 483, this court had tripled the accused's five years jail term to fifteen years for giving militant training to individuals willing to participate in terrorist activities. He had opened Facebook accounts using the names 'Iskandar Dzulquranain IS' and 'Ammar Rasuli Al-Jihadi' to spread the ideology of the Daesh terror group. In the case of *Public Prosecutor v*

Rohaimi bin Abd Rahim & 1 lagi (Criminal Appeal No W-05(H)-83–02 of 2016) (unreported), the first accused was sentenced to three years imprisonment for soliciting contributions to benefit the IS through blog Revolusi Islam.com; while the second accused was sentenced to three years imprisonment for conspiring with the first accused by allowing his Maybank account to be used in the blog. The duo were also sentenced to two years imprisonment each on a joint charge of arranging to facilitate acquisition and control of property for IS terrorist. This court had enhanced their prison sentence to fifteen years on each charge, after allowing the prosecution's appeal for a heavier jail term.

[28] Before parting with this instant appeal, perhaps it would be appropriate for us to refer to the case of *Mukesh & Another v State (NCT of Delhi) And Others* (2017) 3 SCC 719, where the Indian Supreme Court observed:

> 116. ... The courts are consistently faced with the situation where they are required to answer the new challenges and mould the sentence to meet those challenges. Protection of society and deterring the criminal is the avowed object of law. It is expected of the courts to operate the sentencing system as to impose such sentence which reflects the social conscience of the society. While determining sentence in heinous crimes, Judges ought to weigh its impact on the society and impose adequate sentence considering the collective conscience or society's cry for justice. While considering the imposition of appropriate punishment, courts should not only keep in view the rights of the criminal but also the rights of the victim and the society at large.

CONCLUSION

[29] For the foregoing reasons, we are compelled to set aside the sentence imposed by the learned JC because the imprisonment sentence of four years was grossly and entirely inadequate taking into account the nature of the offence, the manner in which it was planned and committed and the motive for the commission of the offence. We, therefore, allowed the prosecution's appeal and set aside the sentence imposed by the High Court and substituted it with an imprisonment of eight years with effect from the date of arrest. So ordered.

Order accordingly.

Reported by Afiq Mohammad Noor